

THE
SENTENCE
OF THE
LIEUTENANT-CRIMINAL
at *Paris*,

In the Extraordinary CAUSE between
ABRAHAM PAYBA,
alias ^K
JAMES ROBERTS, Plaintiff;
AND
EDWARD WORTLEY MONTAGU,
AND
THEOBALD TAAFFE, Esqrs; ¹
MEMBERS of the Hon. HOUSE of COMMONS,
Defendants,

*Translated from the Copy printed at Paris, by Permission
of His Most Christian Majesty, Jan. 25, 1752.*



LONDON:
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Ludgate-street. 1752.
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SENTENCE
OF THE
LIEUTENANT-CRIMINAL

IN THE CASE BETWEEN
ABRAHAM PAYDA,
alias
JAMES ROBERTS, Plaintiff,
AND
HOWARD WORTLEY MONTAGU

AND
THEOPHILUS ELLIS,
Defendant,
Members of Commons.



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1753.

By Authority of the House of Commons.

LONDON:
Printed by J. Robinson, at the Golden-Anchor in
St. Dunstons Church-yard, 1753.
[The Sixteenth]

SENTENCE

*Given by the Lieutenant Criminal, in behalf
of Edward Wortley Montagu and Theo-
bald Taaffe, members of the parliament
of England,*

*Against Abraham Payba, who calls himself
James Roberts.*

January 25. 1752.

TO all who shall see these presents;
Gabriel Jerom de Bullion cheva-
lier count d'Escrimont, lord of Vuidevilles,
Crespieres, Mareil, Montainvillé, and other
places, major-general of the king's armies,
counsellor in his councils, provost of the
city, provostship and vicounty of Paris,
conservator of the royal privileges of the
university of the said city, greeting: be it
known, that having revised the suit extra-
ordinarily commenced and prepared for a
trial before us in the chamber criminal of
the chatelet of Paris, between James
Roberts, a native of England, petitioner
and plaintiff (the king's attorney joining
issue) against Edward Wortley Montagu,
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member of the parliament of England, and Theobald Taafe, also member of the parliament of England, defendants and accused; the complaint made to the commissary Levié by James Roberts against the Sieurs Taafe, Montagu and Southwell the 25th of October 1751, at 6 o'clock in the evening, setting forth, that in the month of May then last past he set out from England with Miss Eleanor Rose, in order to travel together into France and Italy; that before his departure he provided himself not only with bills of the bank of England, but also other bills on different bankers of London, for considerable sums; that he came directly to Paris, where he hired a ready furnished apartment in Touraine street at the Hotel d'Entragues, which he quitted in order to remove to Poissy, where he lived about two months, and then came back to this city, and lodged at the Hotel d'Orleans, in the street of the Petits Augustins in the suburb of St. Germain.

THAT on Monday the 20th of September then last past, the Sieur Montagu,
another

another Englishman, with whom he had no manner of acquaintance nor correspondence, affected to come and see him, and inquire about his health: that this visit greatly surprized the plaintiff, because he was a stranger to him.

THE next day the plaintiff set out for the country, and did not return till the Thursday following, being the 23d of the said month, when at his arrival he found a card, whereby the said Sieur Montagu invited him to dine at his lodgings at the Hotel of Saxony in Colombier street, the next day, being Friday. That in return for the said Sieur Montagu's civility in coming to visit him, he thought he ought to accept of the dinner, and accordingly repaired to the place of invitation, where he found a very large company of Englishmen, and sat down to dinner with them.

THAT all the while they were at table, the said Montagu continually plied the plaintiff with divers sorts of wines and strong liquors, pressing and forcing him

to drink; so that at last he got the plaintiff fuddled.

THAT after dinner, which was not over till about six in the evening, all the guests went up to the apartment of the said *Sieur Montagu* to drink coffee; which being done, all the company retired, except the *Sieur Taaffe* and *Lord Southwell*, who staid with the *Sieur Montagu* and the plaintiff: that the *Sieur Taaffe* having taken up some dice, cast them upon a table, and asked, who had a mind to play: that the plaintiff immediately declined it, alledging for excuse that he had but two crowns about him; upon which the others told him there was no need of money, and that he might play upon his parole. The plaintiff refused it again, telling them, that he had occasion for money, being to set out the Wednesday following on a journey to Italy: but the said *Taaffe*, *Southwell* and *Montagu* so strongly insisted on it, that the plaintiff, who was intoxicated with wine, and no longer sensible of what he was doing, yielded to their importunities.

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EVERY one play'd upon his own account, and the said Sieurs Taaffe, Southwell and Montagu taking advantag of the plaintiff's condition, cheated him so well, that in less than an hour they made him lose eight hundred and seventy louis d'or, amounting to twenty thousand eight hundred and eighty livres, viz. four hundred louis to the Sieur Taaffe, one hundred and twenty to the Sieur Montagu, and three hundred and fifty to the Sieur Southwell. They then let the plaintiff depart, and he went home to his lodgings,

THE next day the Sieur Taaffe sent him a card, praying him to come to sup with him the same day. The plaintiff made answer to the bearer that he was sick, and desired the Sieur Taaffe would be so good as to excuse him.

THE following Sunday, September, 26. he received a letter from the said Sieur Taaffe, by which he was desired to send him the four hundred louis d'or he had won of him; to which he made answer, that he would pay him a visit the Tuesday following.

lowing. But on Monday the 27th, the plaintiff being in bed, the said Montagu, Taaffe and Southwell came and knocked violently at his door, with menaces and oaths, between eleven and twelve at night, and having thus forced admittance, they gave him to understand, that if he did not draw bills for each of them, for what he had lost at play, they would get him immediately carried to the Bastile; letting him farther know, that it was the custom in France to imprison those who refuse to pay at the expiration of twenty-four hours what they had lost at gaming, and threatening to scarify his face with their swords, if he denied them the said bills.

THE plaintiff being intimidated by these menaces, and being ignorant of the customs of France, made a draught to each of them, of what he had lost, upon the Sieur Waters junior, banker in Paris, though this banker had none of his money in his hands; and as they could not be paid by the said Sieur Waters on this very account, the plaintiff, who feared for his life in consequence of their menaces to him, resolved

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to set out the next day, Tuesday 28. of the said month for Lyons, and left the said Miss Rose in his apartment, and in possession of all his effects.

THAT during his abode an Lyons he was informed by divers letters, and it was confirmed to him as soon as he arrived from Lyons in this city, that the very day of his departure the said Taaffe, Montagu and Southwell came in the morning into his apartment, and not finding the plaintiff, but only Miss Rose and her sister, the Sieur Taaffe did persuade Miss Rose to forsake the plaintiff, and come to his lodgings at the Hotel of Peru in Traversiere street, promising to send her over speedily to England. After which he searched the plaintiff's trunks, portmantles and drawers, the keys of which were in the locks, and of his own private authority took out a bag containing near four hundred louis d'or, another bag of English and Portugal coin, which might be worth three hundred louis of France, another bag of twelve hundred livers in six livre crowns of France, a pair of girandoles of brilliants which he had bought

bought of the *Sieur Pierre*, merchant and jeweller at Paris for eight thousand two hundred livres, the plaintiff's picture set with diamonds, worth twelve hundred livres, exclusive of the picture, for which he had paid ten louis d'or to the *Sieur Marolle*; a shirt buckle of diamonds, rubies and emeralds, which cost him six hundred and fifty livres, which buckle and the diamonds of the picture he had also bought of the said *Sieur Pierre*; moreover, lace to the value of one thousand crowns, which had been sold to him both in his passage through Flanders and in this city; seven or eight women's gowns, worth about four thousand livres; two large diamond rings incircled with brilliants; several gold snuff boxes; a travelling case, furnished with porcelain and silver cups, and other things which he cannot recollect: All which effects were put by the said *Taaffe* into a box, which he caused to be carried to his apartment, having ordered it to be put into a hackney coach that waited for him at the end of the street of the *Petits Augustins* with his valet de chambre; and then the said *Taaffe* took the said *Miss Rose* and

and her sister into another coach, which carried them to his lodging, where they staid three days, after which the said Sieur Taaffe sent them away to London with one of his friends who was returning to that city.

AND as the said Sieur Montagu, whom he had not the least acquaintance with, came to see him with no other view than to entice him to his lodgings, in order to make him lose his money at play; as the said Sieurs Taaffe, Southwell and Montagu did not wheedle him to game 'till after they had forced him to drink, and saw him incapable of coping with them; as the money they made him lose at play was not fairly won, the dice they play'd with, as he suspects, being loaded; as the draughts he gave them for his pretended loss at play were extorted by force and menaces, and that moreover the bills in such a case were null, according to the terms of the ordinances, especially as the plaintiff, being but twenty-one years of age, was a minor; and, in fine, that the carry-

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ing off of his effects by the said Taaffe, who was already in ill repute, was a downright robbery, and deserving of the greatest punishment: He therefore exhibited the said petition, with protests that the said bills, or draughts, may not prove hurtful or prejudicial to him, of which he required information at his request, together with an act to be granted him relative to the premises.

PETITION presented by the said James Roberts, for permission to take informations of the facts contained in the said complaint before the commissary Levié; subsequent ordinance of the 26th of the said month, importing permission to inform before the said commissary; information made in consequence by the said commissary the 26th and 27th of the said month; conclusions of the king's attorney subsequent thereto, and ordinance issued on the same the 30th of the said month, importing that it should be joined and continued, and in the mean while the said Taaffe,

Taaffe, Montagu and Southwell, and the said Rose and her Sister, be taken into custody.

INTERROGATORY gone through by the said Theobald Taaffe and Edward Wortley Montagu the 2d of November following before Monsieur Guerey de Voifins privy lieutenant, containing the questions put to them, and their answers: ordinances subsequent, importing, be shewed to the king's attorney, his conclusions and sentence given on the same the 4th of the said month of November, importing, that before proceeding to the definitive judgment of the suit between the parties, the witnesses heard in the charges and informations in question, and those that might be heard hereafter, should be re-examined in their depositions, and if needful confronted with the said accused parties, even the said accused parties should be examined again, and confronted with one another if needfull, to the end that the whole being done and communicated to the king's attorney, he might require, report, and order what is right.

PETITION presented by the said Taaffe and Montagu, praying for enlargement ; next an order of the said day, importing, be it referred to the king's attorney, and signified to the civil party, to answer thereto in twenty-four hours ; notice of the same given in consequence the 5th of the said month, by Ozanne sergeant appraiser at the said chatelet,

PETITION of James Roberts in answer to that of the Sieurs Taaffe and Montagu ; then an order, importing, be it referred to the king's attorney, and signified to the civil party, to be answered in twenty-four hours ; notice of the same given in consequence, by Hadevant, sergeant at the chatelet of Paris, the same day ; conclusions of the king's attorney and sentence of the 6th of the said month, importing, that in three days, for the farthest term and delay, the said James Roberts, civil party, should be bound to proceed to the re-examination and confrontation of the witnesses heard on the matter of his petition, and
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to get the cause in readiness to be tried, otherwise, in failure hereof and the said term elapsed, right should be done on the subject of the said petition, as should appear reasonable.

PETITION presented by the said James Roberts, tending to obtain permission to give information of the facts contained in his complaint, and even to get seals affixed on the effects of the said Montagu, Taaffe and Southwell, by the said commissary Levié, for the conservation of the rights of whomsoever it might concern. Ordinance of the 5th of the said month, granting him this request; and verbal process of the affixing of the seals, of the 6th of the said month.

PETITION presented by the said Edward Wortley Montagu and Theobald Taaffe, tending to obtain their liberty: Ordinance of the 10th of the same month, importing, be it shewed to the king's attorney, and signified to the civil party, to answer thereto

thereto in twenty-four hours: notice in consequence given of the said day by Ozanne sergeant appraiser.

PETITION presented by the said James Roberts, in answer to that of the said Taaffe and Montagu; order thereupon of the 11th of the said month, importing, be it referred to the king's attorney; and signified to the civil party, to answer thereto in twenty-four hours: notice of the same given in consequence the said day by David, sergeant at the said chatelet.

SENTENCE given the same day, importing, that until more ample instructions, the petitioners should be enlarged and let out of the prisons where they were detained, on giving good and sufficient security, which should be received before us, party present, or other duly called to appear personally to all the summons that should be given them for the instruction and judgment of their cause; to which purpose they should enter into recognizances with the recorder of the court in the usual manner,

ner, and fix upon a domicilium in this city of Paris: verbal process of receiving the security drawn up in consequence the same day; recognizances also entered into the said day by the said accused parties.

PETITION presented by the said James Roberts, for permission to take off the seals put at his request on the effects of the said Sieurs Taaffe and Montagu: order thereupon, importing, be it shewed to the king's attorney; his conclusions and sentence given on the same the 9th of the said month, importing, that the seals affixed by the commissary Levié at the request of the said James Roberts on the effects of the said Edward Wortley Montagu and Taaffe, should be acknowledged to have been taken off by the said commissary in our presence, in presence of the said king's attorney, in presence of the petitioner, and in presence of the said Montagu and Taaffe, who should for this purpose be transfer'd from their prison under a good and safe guard, and in presence of the opponents, if there were any, or they being duly called, perquisition

quisition and description should be made of the papers and effects that might be found under the said seals, serving to conviction, which, if any were found, should be brought to the recorder criminal of the said chatelet, to serve for information in the suit, so far as is right and reasonable; the said papers previously marked or signed by us, by the said king's attorney, and by the said Edward Wortley Montagu and Taaffe, each in whatever might concern them, of which a verbal process should be drawn up by the said commissary.

VERBAL process by him drawn up in consequence the 12th, 13th and 15th of the said month. Additional information made in consequence by the said commissary the 25th and 29th of the same month. Conclusions of the king's attorney thereupon, and sentence by us given on the same the 4th of December following, importing, that it should be annexed to the process, and the witnesses re-examined, and if needful confronted, the re-examinations and confrontations of the witnesses heard in the said

said informations in their deposition and to the said accused parties, and of the said accused parties the one with the other, made the 8th, 9th, 18th and 25th November, and 13th of December of the said year.

PETITION presented by the said Edward Wortley Montagu and Theobald Taaffe, tending to obtain an act whereby, as causes and means of attenuation or extenuation against the rash accusation brought against them by Abraham Payba, under the fictitious name of James Roberts, they should employ the contents of the said petition with the pieces annexed thereto; in consequence, in proceeding to give judgment in the cause, discharge the petitioners from the said accusation, declare it false and calumnious, order that their provisional liberty should remain definitive, that their names be erased in the registers of the chatelet and of Fort l'Eveque, in the margin of which mention should be made of the sentence to intervene; the greffiers or recorders constrained to do this, and

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being done they (the petitioners) discharged ; condemn the said Abraham Payba, alias James Roberts, to make reparation of honour, in presence of such twelve persons as they should please to chuse and assemble in the place that should be appointed them, and there say and declare, that it was falsely and wickedly that he imagined, forged and entered his calumnious accusation against them ; that he acknowledges them to be men of honour and probity, incapable of, and not stained with, the facts injuriously and calumniously inserted in his complaint, of which an act should be drawn up in form of a verbal process by the first notary for the purpose required ; of which act a copy should be deposited with our recorder, and another copy of the whole delivered by him to each of the petitioners : condemn him (Roberts) to pay to each of them one hundred thousand livres as civil reparation, and all the costs of suit, in which should be included the charge of the act of reparation, leaving the king's attorney to proceed against the said Abraham Payba, alias James Roberts, for

for assuming a fictitious name and character, and for a public example, in such manner as he should think fit : permit the petitioners to cause our sentence to be printed, read, published and fixed up, as well at Paris as in London, and wheresoever there may be occasion, at the charge of the said Payba, without prejudice to, and expressly reserving to the petitioners, all their other rights and actions, to be exercised by them against whomsoever and in whatever manner they should judge proper.

ORDINANCE thereupon, of the 5th January 1752, importing, be it shewed to the king's attorney, and signified to the civil party, duly sealed the same day, signified to the said Roberts the said day by summons of Francis Brottier first serjeant of audience in the admiralty of the palace, also duly controlled the same day.

ANOTHER petition presented by the said Edward Wortley Montagu and Theobald Taaffe, praying it might be said, that by their persisting in the conclusions they

had made in their petition of attenuation above dated, an act be given them of the complaints by them exhibited before the commissary Chenu the 12th November and 20th December last, and of those they exhibited in the said petition, as well against the said Abraham Payba, alias James Roberts, as against the Sieurs Pierre, Collignon, Chol de Clercy, d'Iverdun, and others their accomplices, factors and adherents in the machination and forgery of the false accusation brought against the petitioners, of the indirect means used to support it, and to deprive the petitioners of the payment of their lawful demands, of the supposititious name, of the public defamation of the other facts and foul practices contained and specified in the complaints of the suppliants in their petition of extenuation, and of those resulting from the action and suit brought against them : in consequence permit them to bring informations of the said facts, circumstances and dependencies, before the commissary Chenu, or any other that should be appointed, to the end that the information being

made

made and reported, and communicated to the king's attorney, what is of right and reason might be required and ordained, under the exprefs reservation which the petitioners make of all their rights, names, reasons and actions against whomsoever it might concern.

ORDINANCE thereupon, importing, be it shewed to the king's attorney ; his conclusions and another order given on the same, the 10th January in the said year, importing, that the said petition and complaints should be annexed to the process, to the end that due regard might be had thereto in passing sentence. Copies of the complaints exhibited to the commissary Chenu the 12th and 20th December of the said year by the said Montagu and Taaffe against the persons named in the same joined in consequence.

PETITION presented by the said Sieur James Roberts, tending to have it said, that before preceeding to the definitive sentence in the cause between the parties, the petitioner might be permitted to seize and recover the bills specified in the said petition wherever they should be found, in order to the depositing the same with our recorder

corder as instructive pieces of the process, and to serve for commission or otherwise as in right and reason should appear.

ORDINANCE thereupon, of the seventh of the said month, importing, be it showed to the king's attorney, and signified to the civil party, to make answer thereto in twenty-four hours; the said ordinance sealed and signified the tenth of the said month by summons of David, serjeant at the said Chatelet, duly controlled the same day. Conclusions of the king's attorney consequent of the said petition and ordinance issued on the same the eleventh of the said month, importing that it should be annexed to the process, to the end that due regard might be had thereto in giving sentence.

PETITION to us presented by the said Sieurs Taaffe and Montagu, tending to have an act given them of that to overthrow the conclusions in the petition of Abraham Payba, signified the tenth of the said month, they employed the contents of the same; and this being done, to give them likewise

likewise an act, that for making the said Payba entirely desist, and without any approbation, and only to accelerate and corroborate the conclusions of their petition of extenuation signified the fifth of the said month, in the which they persisted, they joined to the process between them and the said Payba the two orders, or draughts, by him made and given for their benefit under the Name of James Roberts the twenty-seventh of September then last past, viz. to the said Sieur Montagu of one hundred and twenty louis, amounting to two thousand eight hundred and eighty livres, and to the said Sieur Taaffe of four hundred louis making nine thousand six hundred livres, together with the retrocession made to the said Sieur Taaffe, the Sieur Clement his cessionary of the said sum of nine thousand six hundred livres, by act passed before Boulard and company notaries in Paris the eleventh of the present month; which being done, without regarding the said Payba's petition for seizing and recovering the said draughts, to proceed to judgment in the cause, adjudge to the

the petitioners the conclusions by them made in the same, and moreover ordain by the sentence that shall intervene, that the said draughts be delivered up to the petitioners, for the exercise of their rights and actions, and that the petitions delivered in the course of the said proceedings by the said Payba, under the fictitious Name of *James Roberts*, be suppressed as injurious and calumnious, with damages, interests and costs, reserving to themselves their other rights and actions.

ORDINANCE thereupon, importing, be it shewed to the king's attorney; his conclusions, and another order issued on the same the 11th of January, of the said year, importing, that the said petition and pieces should be annexed to the process, in order to have due regard thereto in giving sentence, and signified; notice given in consequence the 13th of the said month and year.

ANOTHER petition presented by the said Montagu and Taaffe, setting forth, that since it was constantly proved in the process between the petitioners and Abraham Payba, falsely calling himself *James Roberts*, that the accusation by him brought
against

against the petitioners was a downright calumny, that till the final judgment in the cause, a writ might be issued for taking into custody the body of the said Abraham Payba, and ordering him to be entered in the books, and committed to the prison of Fort l'Eveque, where the petitioners had heard he was detained, the proof of the egregious calumny of the said Payba and of his fictitious name being evident, and standing in no need of the information which the petitioners reserved against the accomplices of the said Payba.

ORDER made thereupon, importing, be it shewed to the king's attorney; and his conclusions, and another order issued on the same the 19th of the said month of January, importing, that it should be annexed to the process, that due regard might be had to it in giving judgment.

ANOTHER petition presented by the said James Roberts, praying, that an act might be given him of his diligence and of his offers to carry on the suit of contumacy; and that it should be ordered, before proceeding to judgment in the cause between the parties, the prosecution for contumacy,

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at the request and diligence of the petitioner, should be carried on against the Sieur Southwell and Eleanor Rose and her sister, conformably to the ordinance, that so their trial might be finished and perfected according to the rigour of the ordinances.

ORDER made thereupon, importing, be it shewed to the king's attorney; his conclusions and another order issued on the same, importing that the proceedings on the contumacy begun at the suit of the petitioner against the said Southwell, Rose and her sister, should be continued, but still without any delay of judgment in the suit carried on at the petitioner's request against the said Taaffe and Montagu, in the which there were some definitive conclusions, the report and inspection of which had been already begun, and which lay on the table ready for judgment.

CONCLUSIONS of the 15th and 25th January of the said year made on this, and given in writing by the king's said attorney, to whom the whole had been shewed and communicated, and after the said Edward Wortley Montagu and Theobald Taaffe
were

were afresh interrogated in the chamber and in prefence of the council, about the facts refulting from the procefs and cafes laid to them, the whole as is there more at large contained; we having confidered by deleliberation of the council, heard on the fame the king's attorney; fay that the faid Edward Wortley Montagu and Theobald Taaffe are difcharged from the complaints and accusations brought againft them by the faid James Roberts; that their names fhall be erazed and blotted out of the jail books, to which the greffiers or registers fhall be conftained, and this being done they fhall be well and validly quit and difcharged thereof; that the faid James Roberts is condemned to make reparation of honour to the faid Edward Wortley Montagu and Theobald Taaffe in the prefence of twelve fuch perfons as they fhall pleafe to chufe and afsemble in the place they fhall appoint, and there fay and declare, that it was falfe and wickedly that he imagined, contrived and entered againft them the calumnious accusation; that he allows them to be men of honour and probity, incapable of, and unfained with, the facts injurioufly and calumnioufly inferted in his complaint; of which reparation

an act shall be drawn up in form of the verbal process by the first notary required to do it, of which act a copy shall be deposited in the office of the recorder criminal of the chatelet, and of the whole another copy shall be delivered by the said recorder, or register, to each of the said Edward Wortley Montagu and Theobald Taaffe; that the said Roberts is condemned in ten thousand livres damages and interests to each of the said Edward Wortley Montagu and Theobald Taaffe, by way of civil reparation: We permit the said Edward Wortley Montagu and Theobald Taaffe to cause present sentence to be printed, published and fixed up wherever there may be occasion, and to bring information on the subject of their petition before the commissary Chenu, of the facts mentioned in the complaints by them exhibited to the said commissary the 12th of November and the 20th of December last, and of the facts contained in their petition of the 7th of the present month, circumstances and appendages: we order that the two orders or bills deposited in the office of the recorder criminal of the chatelet by the said Edward Wortley Montagu and Theobald Taaffe, shall be delivered up to them,

them, which the said recorders shall be constrained to do, by means of which they shall be well and validly quit and discharged thereof, leaving them to seek farther civil remedy as they shall think best; and that the injurious terms inserted in the petition of the said James Roberts shall be and remain suppressed: we moreover condemn the said James Roberts to pay all the costs of suit, even the charges of printing our present sentence and the act of reparation: order besides, that the proceedings for contumacy begun at the request of the said James Roberts against Southwell and Eleanor Rose and her sister, shall be continued, and they prosecuted according to the rigour of the ordinances.

IN witness whereof we have caused these presents to be sealed, done and judged the 25th January 1752, by Messire Stephen Louis John Baptist Guerey chevalier lord de Voisins, counsellor of the king in his councils, privy lieutenant and civil and criminal assessor of the city, provostship and vicounty of Paris, and judge-reporter, with advice of the Sieurs Benoit, Marotte du Coudray, Nau de Saint Marc,
d'Avesne

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d'Avesne de Fontaine, and Lugat, all coun-
sellors of the king in his chatelet of Paris.
Collated, signed LA FONTAINE.

Sealed the 26th of January 1752.
SAUVAGE.

Controlled, signed HERAN, and signified
to the said ROBERTS.

Copy, signed CRESSONIER attorney.



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